

Message Text

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ACTION EUR-12

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PASS TREASURY ELECTRONICALLY FOR LUBICK AND RAEDEL
FROM ROSENBLOOM

E.O. 11652: N/A
TAGS: EFIN, UK
SUBJ: UK TREATY

FULL DISCUSSION WITH UK INLAND REVENUE REPRESENTATIVES
(POLLARD, SMALLWOOD, HALL) PRODUCED FOLLOWING
CONCLUSIONS:

1. UK PREPARED IN PRINCIPLE TO NEGOTIATE PROTOCOL
MAKING PETROLEUM REVENUE TAX CREDITABLE ON PER
COUNTRY BASIS. DETAILS REGARDING SECTION 907
PRINCIPLES AND STACKING RULES TO BE WORKED OUT.
NEGOTIATIONS CAN BEGIN THIS FALL AND PROTOCOL CAN
APPLY ON RETROACTIVE BASIS FROM DATE OF ENTRY IN
FORCE OF CONVENTION. THIS COMMITMENT CLEARED AT
MINISTERIAL LEVEL.
2. SAME PROTOCOL COULD DEAL WITH PROBLEM OF STATE
ACCESS TO UK INFORMATION. INLAND REVENUE LEGAL COUNSEL
HAVE REACHED CONCLUSION THAT TREATY ALLOWS STATE ACCESS

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TO INFORMATION ONLY FOR PURPOSES OF DETERMINING WHETHER
ARTICLE 9(4) APPLIES. NO RPT NO ACCESS FOR PURPOSE OF
DETERMINING ARMS LENGTH PRICE. THIS CONCLUSION
DICTATED BY FACT THAT ARTICLE 2 COVERS STATE TAXATION
ONLY FOR PURPOSES OF ARTICLE 9(4). IN ADDITION, IT IS
NOT POSSIBLE UNDER UK LAW TO EXCHANGE NOTES
INTERPRETING TREATY WHERE ANY DOUBT REGARDING TREATY

MEANING EXISTS. ANYTHING HAVING FORCE OF LAW UNDER UK JURISPRUDENCE MUST GO TO PARLIAMENT FOR RATIFICATION. IN THESE CIRCUMSTANCES, SEEMS ADVISABLE -- AND RELATIVELY SIMPLE -- TO AMEND CONVENTION BY PROTOCOL TO PERMIT STATE ACCESS TO UK INFORMATION FOR APPLICATION OF ARMS LENGTH STANDARD. INLAND REVENUE HAS NO OBJECTION IN PRINCIPLE TO SUCH A PROVISION IF SAME PROCEDURES AND STANDARDS WOULD APPLY AS IF REQUEST MADE FOR FEDERAL PURPOSES. (INLAND REVENUE CONCERNED THAT STATE ACCESS TO INFORMATION MIGHT BE USED AS END RUN AROUND RESTRICTIONS ON UNITARY METHOD.) COMMITMENT TO NEGOTIATE PROTOCOL PROVISION AS DESCRIBED ABOVE REQUIRES MINISTERIAL CLEARANCE -- NOT YET OBTAINED BUT TO BE SOUGHT LATER THIS WEEK.

3. UK REPRESENTATIVES MORE RELUCTANT TO COMMIT TO PROTOCOL IMPROVEMENTS OF ARTICLE 9(4). "IMPROVEMENTS" LIKELY TO MEAN INCREASED APPLICATION OF UNITARY METHOD, REPUGNANT TO UK. THIS ISSUE VERY COMPLEX, DIFFICULT OF RESOLUTION, AND ALREADY EXAMINED SEVERAL TIMES, ALTHOUGH ALWAYS UNDER TIME PRESSURES. INLAND REVENUE WORRIED THAT STRONG COMMITMENT MAY GIVE RISE TO EXPECTATIONS. PREFERS MORE LEISURELY CONSIDERATION OF ISSUE, IF POSSIBLE WITH BENEFIT OF ADDED INFORMATION GAINED FROM PRACTICE UNDER ARTICLE 9(4). NEVERTHELESS, SUBJECT TO MINISTERIAL CLEARANCE NOT YET OBTAINED, LIMITED OFFICIAL USE

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WILLING TO COMMIT TO ENTER INTO DISCUSSIONS -- TAKING ACCOUNT OF SUGGESTIONS BY STATE TAX ADMINISTRATORS -- TO REVIEW UNITARY PROBLEM AND QUESTION WHETHER ARTICLE 9(4) A PROPER SOLUTION.
HARTMAN

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